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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re: Case No. 10-30406-elp11
REMYNTON RANCH, LLC, **MEMORANDUM OF POINTS AND**
Debtor. **AUTHORITIES IN SUPPORT OF MOTION**
TO DISMISS
Filed By Hooker Creek Companies, LLC

I. INTRODUCTION

Hooker Creek Companies, LLC moves to dismiss this matter under 11 U.S.C. § 1112(b), on the grounds that the debtor has failed to confirm a plan, is unable to effectuate a confirmed plan, and that the filing was in bad faith. There is no possibility of a successful reorganization and no reason for the case to remain in bankruptcy. Dismissal will best serve the interests of the parties.

II. POINTS AND AUTHORITIES

The Court has broad discretion whether to dismiss a Chapter 11 proceeding for cause under 11 U.S.C. § 1112(b). *In re Woodbrook Associates*, 19 F 3d 312 (7th Cir 1994). Among the factors constituting “cause” for dismissal or conversion is the debtor’s failure to confirm a plan, or to



1 effectuate a confirmed plan. 11 U.S.C. § 1112(b)(4). The statutory grounds for cause are
 2 illustrative, not exhaustive, and the court may dismiss a case for cause based upon other factors
 3 not expressly listed in section 1112. *In re Detienne Associates*, 342 BR 318, 324 (Bankr D Mont
 4 2006). Once cause is established, the Court shall dismiss or convert the case unless unusual
 5 circumstances exist which establish that dismissal or conversion is not in the best interests of the
 6 creditors. 11 U.S.C. § 1112(b)(1). Dismissal of this case is appropriate under multiple factors.

7
 8 **1. Debtor Has Failed to Confirm a Plan.**

9 A Chapter 11 case may be dismissed under 11 U.S.C. § 1112(b) where the debtor fails to
 10 confirm a plan within the time fixed by statute or court order. 11 U.S.C. § 1112(b)(4)(J).

11 Here, debtor has had over one year to present and confirm a plan. Debtor faced serious
 12 objections to its proposed plans, and confirmation would have been doubtful, given the current real
 13 estate market conditions that made the debtor's income projections unfeasible. At the February 25,
 14 2011 status hearing, debtor candidly acknowledged that it could not confirm a plan without a
 15 settlement with Columbia State Bank regarding its claim, and that no such settlement was
 16 forthcoming despite lengthy negotiations. Debtor also acknowledged that it would not be able to
 17 finance a plan currently. Debtor therefore withdrew the Fourth Amended Plan two weeks before the
 18 scheduled confirmation hearing, and is not proposing an alternative plan of reorganization.
 19 Debtor's admissions and its withdrawal of the plan after over a year in bankruptcy amount to a
 20 failure to confirm a plan under Section 1112(b)(4)(J), and dismissal is warranted.

21
 22 **2. Debtor Is Unable To Effectuate A Confirmed Plan.**

23 A case may also be dismissed for cause when there is an "inability to effectuate substantial
 24 consummation of a confirmed plan." 11 U.S.C. § 1112(b)(4)(M). In a single asset real estate case,
 25 when a debtor's plan cannot be confirmed, and there is no equity in the property, the best interests



1 of the creditors warrants dismissal of the case. *In re 499 W. Warren Street Associates Ltd.*, 151 B
 2 R 307, 314 (Bkrtcy N D N Y 1992).

3 As discussed above, debtor has conceded that it cannot confirm a plan of reorganization
 4 after over a year and four amended proposed plans. As in the *499 W. Warren Street* case, *supra*,
 5 there is no equity, the property is fully encumbered, and there is no income from the property to
 6 support a plan. Under these circumstances there is no way that debtor can effectuate a confirmed
 7 plan under Section 1112(b)(4)(M), and dismissal is appropriate without further delay.

8

9 **3. Debtor's Filing Was In Bad Faith.**

10 In addition to the foregoing statutory factors, "[C]ourts have overwhelmingly held that a lack
 11 of good faith in filing a Chapter 11 petition is grounds for dismissal for cause under 11 U.S.C. §
 12 1112(b)." *In re Marsch*, 36 F3d 825, 828 (9th Cir 1994). "Good faith" does not depend on the
 13 debtor's subjective intent, *id.*, but on objective factors such as the debtor's financial status, its
 14 motives, and the local economic environment. *In re Arnold*, 806 F2d 937, 939 (9th Cir 1986). In
 15 particular, there is a lack of good faith when a petition has been filed to achieve objectives that are
 16 outside the legitimate scope of the bankruptcy laws. *In re Marsch, supra*. "The test is whether the
 17 debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy,
 18 efficient reorganization on a feasible basis." *Id.*

19 In this case, numerous factors support dismissal for cause on the grounds that this is a bad
 20 faith filing. It is a single asset real estate case where the debtor has no equity and the property
 21 generates no income. See *In re Detienne Associates, supra*. There are no employees other than a
 22 property caretaker and a bookkeeper. The proposed plan was based upon income projections that
 23 were patently unrealistic given the stagnant economy for real estate in Central Oregon. The petition
 24 was filed on the eve of a foreclosure sale, and while Hooker Creek's state court foreclosure action
 25 was pending. The debtor has acknowledged that once the debtor was unable to negotiate a



1 settlement with Columbia State Bank, it lost any ability to confirm a plan. The proceedings appear
 2 to have been motivated by a desire to negotiate rather than reorganize, and to protect the principals
 3 of the debtor. These factors support a finding of bad faith, and dismissal under section 1112(b). *In*
 4 *re Stolrow's, Inc.*, 84 BR 167, 171 (9th Cir 1988).

5
 6 **4. The Case Should be Resolved By Dismissal, Not Conversion Or a Sale Under**
 7 **Section 363.**

8 **a. *Dismissal Rather Than Conversion Is In the Best Interests of the***
 9 ***Creditors.***

10 Upon a finding of cause, the Court has discretion to either dismiss a case or to convert it to a
 11 Chapter 7 proceeding based on whichever alternative is in the best interests of the creditors. 11
 12 U.S.C. § 1112(b); *In re Owens*, 552 F3d 958 (9th Cir 2009).

13 Dismissal rather than conversion is the only feasible alternative here for a number of
 14 reasons. There are no liquid assets that need to be administered by a bankruptcy trustee, and no
 15 liquid assets with which to fund the administration of a Chapter 7 proceeding. *See In re Helmers*,
 16 361 B R 190 (Bkrtcy D Kan 2007) (dismissal rather than conversion appropriate where secured
 17 creditors are well situated to protect their rights outside bankruptcy, only one creditor would benefit
 18 from conversion, and Chapter 7 administration would only add layer of cost). Dismissal is
 19 appropriate where state law proceedings are poised to go forward, as they are here. *In re*
 20 *Mazzocone*, 183 B R 402 (Bkrtcy E D Pa 1995). Dismissal is usually the appropriate remedy in a
 21 case where there is only a single asset in the bankruptcy estate and the case basically amounts to
 22 a dispute among secured creditors. *See In re Brandywine Associates, Ltd.*, 85 BR 626 (Bankr M D
 23 Fla 1988) (dismissal for bad faith under section 1112 appropriate where debtor's only asset was
 24 fully-encumbered apartment complex, there was no cash flow, and debtor filed bankruptcy to avoid
 25 pending foreclosure). Converting the case and administering it would unnecessarily consume the
 resources of the Court, the creditors, and the debtor. The state court foreclosure proceedings



1 would be a more efficient forum for resolving remaining disputes among the creditors. Based upon
2 these factors the case should be dismissed rather than converted.

3
4 ***b. A Sale Under Section 363 Is Not a Permissible Alternative.***

5 Debtor has proposed to sell its only asset in lieu of a plan. Hooker Creek Companies LLC
6 will set forth its objections to such a sale separately once that motion is filed. Debtor's proposal,
7 and the extensive motions and hearings that it would involve, would consume more of the Court's
8 and the parties' resources without advancing any legitimate purpose under Chapter 11. The
9 interests of the creditors would appear to be better served by allowing those creditors to assert their
10 interests in the state court proceedings. Dismissal is the more appropriate resolution.

11 DATED this 16th day of March 2011.

12 FRANCIS HANSEN & MARTIN LLP

13 /s/ Martin E. Hansen
14 MARTIN E. HANSEN, OSB #80052
15 (541) 389-5010
16 Attorneys for Hooker Creek Companies, LLC
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CERTIFICATE OF SERVICE

I Regina Paul certify as follows:

I am employed in the County of Deschutes, State of Oregon; I am over the age of eighteen years and am not a party to this action; my business address is 1148 NW Hill Street, Bend, Oregon 97701, in said County and State.

I certify that on March 16, 2011, I caused to be served a full and correct copy of the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FILED BY HOOKER CREEK COMPANIES, LLC** to all ECF participants as indicated on the Court's Cm/ECF system as follows:

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CERTIFICATE OF TRUE COPY AND SERVICE



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4 I further certify that on March 16, 2011, I caused to be served a full and correct copy of
5 the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**
6 **DISMISS FILED BY HOOKER CREEK COMPANIES, LLC** by causing a full, true, and correct
7 copy thereof to be sent by mailing in a sealed envelope, addressed to the last-known office
8 address of the party, and deposited with the United States Postal Service at Bend, Oregon.

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20
21 I swear under penalty of perjury that the foregoing is true and correct to the best of my
22 knowledge, information, and belief.

23 DATED this March 16, 2011.

24
25 /s/ Regina Paul
Regina Paul, Legal Assistant

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